

MESSAGE FROM THE GOVERNOR.

Mr. J. T. Bowman, private secretary to the Governor, appeared at the bar of the House, and, being duly announced, presented the following message from the Governor, which was read to the House:

Executive Office,
State of Texas.

Austin, Texas, March 1, 1911.

To the House of Representatives:

Herewith I return to you House bill No. 16, the same being "An Act to amend Sections 9, 9g, 9j, 14 and 15 of Chapter 17 of the General Laws of the State, as amended by the Thirty-first Legislature, licensing the occupation of liquor dealers, said Act being generally known as the "Seven O'clock Closing Bill."

The proposed Act is objected to on constitutional grounds, and for other sound reasons, as follows:

Contains Two Subjects.

The bill contains two subjects, to wit: First, the regulation of the occupation of a liquor dealers, and, second, the prohibition of a particular class of persons from making contributions for campaign purposes. This fact makes the proposed law unconstitutional, and I do not believe that a self-respecting prohibitionist, who would have due regard for his oath of office, if he were Governor, and desired to see a valid law on these subjects enacted, could or would approve the bill. On this subject I quote the following from Article 3 of the Constitution:

"Section 35. No bill (except general appropriation bills, which may embrace the various subjects and accounts for and on account of which moneys are appropriated) shall contain more than one subject, which shall be expressed in its title."

This provision of the Constitution clearly shows that the Legislature is forbidden to pass a bill which contains more than one subject.

Denies Equal Rights Before the Law.

The bill confers the right to pursue occupation, and thus makes the earning of money from such business lawful. It then seeks to prevent persons engaged in such occupation from con-

tributing money for campaign purposes, even if it is lawfully used. The Act does not make such contributions a crime, and nowhere in the laws of this State is such contribution denounced by statute as unlawful, except on the part of corporate creatures of the State. The prohibition of such contributions is not confined to money earned from such occupation, but it is sought to deny the right to contribute at all, even though the money contributed might be derived from rents on real estate, from dividends, from the sale of live stock or any other property, or from wages lawfully earned. Certainly this provision is not in harmony with any express or implied power given to the Legislature by the Constitution, but is directly in opposition to the provisions thereof, which says that "equal rights shall not be denied by the Legislature to any man." I can not presume that the authors of this proposed Act were so ignorant of the Constitution and the inherent rights of men under our form of government as not to know that this provision is inconsistent with our organic law. I must, therefore, conclude that it is not the result of ignorance, but is the deliberate act of a partisan spirit, which is seeking to bolster up political issues in this State, which are seemingly melting away in other sections of the country where rant, and cant, and political hypocrisy over such enactments has been forced to give way to sober, dispassionate judgment of the people, who are returning to sane and reasonable enactments for the control and regulation of the liquor traffic. If the Constitution has been ignored in the passage of this bill for the purpose of tendering a political issue, it is herewith accepted with alacrity. Its proponents might as well go a step further and say that lawyers, as a class, should be denied the right to contribute to campaign funds because they earn their fees and their living from a defense of persons charged with murder, stealing and other crimes. It would be just as constitutional for them to have gone still further and said in this bill that the "Legislature hereby licenses a man to follow the occupation of a liquor dealer, but he is hereby prohibited from contributing anything to the support of the schools or churches." They might have gone yet further and

said in the bill that none of the occupation tax should be applied to public education. They could, with as much reason and justice, have said in the bill that a man who engaged in the business of selling liquor should not vote in elections. I am aware that in the conflict of faction dominating majorities, in all ages and in all governments, and in all human experience, are predisposed to deny equal rights before the law to those whom they have the power to oppress. I know that measures are too often decided not according to the rules of justice and the rights of minor parties but by the force of an interested and overbearing majority. This was the rule and practice throughout the ages until the American system of government was devised. By our written Constitutions we safeguard the simplest right of the individual, and neither overpowering majorities nor partisan legislation can deprive him of it. Under our great system, founded in the spirit of justice, the thief can have his citizenship and his right to vote in elections restored to him, even as he was forgiven on the cross. We all know "the propensity of mankind to fall into mutual animosities, and that the most frivolous and fanciful distinctions have been sufficient to kindle our unfriendly passions and excite the most violent conflicts." In such moments the rights of individuals or minority classes may be engulfed in ruin and injustice. The written constitutions of our country, and the dividing of the functions of government into three parts, has effectually provided a check against the absolute rule of passion by the majority. This thought is a comforting one to the lover of the liberty and justice which our Constitution assures us, and what will it profit us if we forget these guarantees in our mad and covetous rush for office and popular favor, and commit ourselves to a policy today that will plague us and destroy our own protection on tomorrow?

Can Not Confer Judicial Authority on Comptroller.

The proposed Act requires of applicants for license to follow the occupation of liquor dealers to fill out a blank and answer certain questions and furnish certain information. After compliance with this re-

quirement by the applicant, it is sought to confer upon the Comptroller the power to investigate into the truthfulness of the answers therein given and the statements therein made for the purpose of determining their truthfulness. Such an inquiry is judicial, for the statement is required to be sworn to. It is further sought to confer upon the Comptroller authority to determine whether the statements are true or false and to determine if the applicant has theretofore violated any law. This is judicial and the Legislature can not confer judicial functions upon the Comptroller. He is made, by the Constitution (See Art. 4, Sec. 1), a member of the executive branch of the government. Article 2, Section 1, of the Constitution, divides the powers of government into three parts, viz: legislative, executive and judicial, and expressly provides that "No person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others." The proposed bill clearly seeks to confer upon the Comptroller power to inquire into the violation of a law, and seeks to clothe him with authority to deny a substantial privilege, expressly authorized by the Act, by his finding, or ipso dixit. Such an ascertainment and inquiry into the violations of law and the infliction of penalties and the denial of privileges granted, for an infraction of the law, as I understand the meaning of the Constitution, is purely a judicial procedure, which can not be conferred upon the Comptroller by the Legislature. Upon the finding of the Comptroller, the proposed Act also seeks to vest him with authority to "outlaw" any person whom the whims or caprice of the Comptroller, for any reason, real or imaginary, might want to deny the privileges granted by the Act. This is repugnant to the Bill of Rights, which says, "no citizen shall be outlawed" (see Section 20). The proposed Act also confers upon the Comptroller the power of conviction and denies to the accused the right to a trial by jury and to be confronted with the witnesses against him. No such power can be conferred and ought never to be exercised by an executive officer. The temptation to oppress in the use of such

power, on the one hand, and the tendency to use it as a favor to those who might be the friends of the dispenser, on the other, would be very great, and doubtless would be yielded to according to the inclinations of the man holding the office, and in either case it would lead to abuses which the judicial department of the government was instituted and clothed with authority to prevent in the administration of justice. Who that has read Macaulay's account of the accusation against the Bishops and the arraignment and trial of them does not appreciate the difference between "accusation" and the "establishment of guilt" by evidence in a court.

Efficacious Law Suggested.

Last summer, in the campaign for the submission of the prohibition question in the form of an amendment to the Constitution, this and similar measures were discussed. It is not necessary here to enter into a general discussion of what was said and done during the canvass; but the Legislature has already passed a joint resolution to change the Constitution and calling an election for the twenty-second day of next July to determine if the people of Texas want to prohibit the manufacture, sale or importation of intoxicating liquors throughout the entire commonwealth. Already, under the operation of the local option provision of the Constitution, which this state-wide prohibition amendment proposes to repeal, there are about one hundred and fifty counties in the State wholly under the operation of the local option laws, and in these the saloons have been closed for twenty-four hours in each day. Of the remaining counties the large portion of many of them are under the operation of the local option law, and as fast as the people of each precinct or county in the State are ready for and desire the enforcement of such a law, they can adopt it upon themselves. Indeed, it may not be far from the facts to say that the seventy-one votes in the House and the sixteen votes in the Senate for this bill come from legislative districts, for the most part if not entirely, subject to the operation of the local option laws. The trend toward the adoption of local option

has been steady. It is recognized by well informed and dispassionate men that the citizens living in one county can not control the acts of the people in another county; they cannot vote for officers nor sit on the juries in other counties than the one of their residence, and, after all, they recognize that the successful enforcement of a law depends largely upon public sentiment. If the public sentiment is favorable to a strict enforcement of the law, the community where it may be violated will apply the law to those guilty of its infraction. Recognizing this to be true, and being myself in favor of strict liquor regulatory measures, and their enforcement, I suggested to some of the friends, as well as the opponents, of the bill herein discussed, that I believed a simple statute conferring upon the city council or the city commission of any incorporated city or town, the right not only to prescribe the territorial limits in which saloons might be located, but the hours during which they could remain open, would be, in my opinion, a proper police regulation and one that could be satisfactorily enforced in any city or town adopting it. Such a law I would have gladly given my approval. But it seems that the desire for the exercise of power is so strong that rational legislation on the liquor question is to be ignored by those who profess to be the enemies of the liquor traffic; it seems that they would prefer to risk the test of an unconstitutional act in the courts, with its attendant political trimmings, to the benefits of an efficacious law applied by the will of those whom it directly affects.

It is perhaps needless to pursue a further discussion of this question here. The state-wide question of prohibition is soon to be fought out in this State. After it shall have been voted on and decided, perhaps the soldiers of "political fortune" will be satisfied to separate into permanently hostile camps, or else consent that the even tenor of the constitutional way shall be followed and let this weary State be at political rest.

We already have good laws on the subject of liquor regulation—the best perhaps of any of the States. These can be improved some and can be much better enforced, and to this

end I shall be only too glad to co-operate with all the friends of law and order and temperance everywhere.

The reasons I have assigned amply justify me in returning to you House bill No. 16 without approval, which is accordingly done.

Respectfully submitted,

O. B. COLQUITT,
Governor of Texas.